IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

A. L. SMALLEY AND F. McCLELLAN,
Plaintiffs in Error,
vs.
GEORGE F. LAUGENOUR AND JANE LAUGENOUR,
Defendants in Error.

No. 384

In Error to the Supreme Court of the State of Washington.

Motion to Dismiss or Affirm.

MOTION

Come now George F. Laugenour and Jane Laugenour, defendants in error, and move the Court to dismiss the writ of error herein, or to affirm the judgment and decree, for the following reasons:

1. That this Court has no jurisdiction herein.
2. That no Federal question is involved herein.

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THE PLEADINGS.

This is an action in ejectment, commenced in the Superior Court of Lincoln County, Washington, by A. L. Smalley and F. McClellan, plaintiffs in error, against Defendants George F. Laugenour and Jane Laugenour, his wife, the defendants in error, and one John F. Green, and one Henry Gilliland, to recover possession of the east half of section thirty-three (33), in township twenty-three (23) north of range thirty-seven (37) E. W. M., in Lincoln county, Washington. The complaint was in the usual form of ejectment, simply alleging that plaintiffs were at all times since May 23, 1900, owners of said real estate, entitled to the possession thereof, and that defendants had unlawfully entered into possession and were detaining the same. The complaint contains no allegation disclosing the source of plaintiffs' alleged title.

Defendants in their answer admitted that George F. Laugenour and Jane Laugenour were husband and wife, but by specific denials traversed each and every other allegation of the complaint. Defendants Laugenour and wife also plead three affirmative defenses, the third being the only one material at this time. In this defense they, in substance, allege:

1. That George F. Laugenour was at all times since May 13, 1899, the owner of the real estate in the complaint described, and entitled to the possession thereof.

2. That on the 16th day of March, 1895, the plaintiffs, A. L. Smalley and F. McClellan, and one L. J. Hutchings, then co-partners under the firm name and style of L. J. Hutchings & Company, obtained a personal judgment in the Superior Court of Lincoln county, Washington, against said George F. Laugenour.

3. That after the entry of said judgment, to-wit: on the 13th day of May, 1899, an attempt was made by said judgment creditors to sell said real estate for the satisfaction of said judgment, under an *alias* execution issued thereon; that the plaintiffs became purchasers of said real estate at said sale, and that the only claim which plaintiffs have in or to said real estate, is by virtue of said judgment and said execution sale in satisfaction thereof.

4. That on May 10, 1899, George F. Laugenour, filed in

the United States District Court for the District of Washington, Eastern Division, a voluntary petition in bankruptcy, and on May 11, 1899, was adjudged a bankrupt.

5. That in said petition in voluntary bankruptcy, the names of the creditors of said bankrupt, including the names of said judgment creditors, and all of the property of said bankrupt, were scheduled, especially the real estate above described, which real estate was in said voluntary petition in bankruptcy claimed to be exempt from execution.

6. That after said adjudication, the referee in bankruptcy notified all creditors of said bankrupt, including said judgment creditors, the plaintiffs in this action, to present their claims, and that the first meeting of creditors would be held on June 5, 1899; that at said time no creditors appeared for the purpose of electing a trustee, and that as the schedule showed no property subject to the payment of debts, it was adjudged by the referee that no necessity existed for the appointment of a trustee in bankrupcy.

7. That afterward, to-wit: on the 9th day of August, 1899, an order was made discharging said George F. Laugenour in bankruptcy.

8. That on the 12th day of August, 1899, the Honorable C. H. Hanford, Judge of the United States District Court, for the State of Washington, Eastern Division, in said bankruptcy proceeding, regularly made and entered an order awarding and setting aside to said bankrupt, George F. Laugenour, as exempt, all the real estate above described.

To this answer plaintiff made reply, which reply contained certain admissions, denials and affirmative allegations. The only allegation in the affirmative reply pertaining to said bankruptcy proceeding, however, was set forth in the third paragraph thereof, and in substance alleged: That on the date of rendition of said judgment, to-wit: on the 16th of March, 1895, the said George F. and Jane Laugenour were owners of said real estate, and that said judgment immediately became a lien thereon, which lien was obtained more than four months prior to the filing of the petition in voluntary bankruptcy.

FINDINGS OF FACT.

Upon the issues formed, and upon the evidence, trial was had before the Judge of the Superior Court of Lincoln county, Washington, (a jury having been waived) and the Court made its Findings of Fact and Conclusions of Law which appear at pages 10-13, Transcript of Record. The findings of fact substantially sustained all of the allegations of the third affirmative defense of the answer of defendants above set forth.

The findings material on this hearing are substantially as follows:

1. That Defendants Laugenour and wife were the owners and in possession of said real estate as community property from and after March 16, 1895.

2. That on the 16th day of March, 1895, the said A. L. Smalley, F. McClellan and L. J. Hutchings obtained and entered said judgment against George F. Laugenour, in the Superior Court of Lincoln county, Washington.

3. That on April 12, 1899, an execution was issued on said judgment, levied on said real estate, and said real estate was sold thereunder on May 13, 1899, to plaintiffs for $532.15, to satisfy said judgment.

4. That said sale was confirmed on May 27, 1899.

5. That on May 23, 1900, the period of redemption having expired, a sheriff's deed was delivered to plaintiffs and duly recorded.

6. That said Laugenour and wife have at all times been in possession of said real estate.

7. That on May 10, 1899, George F. Laugenour filed his petition in voluntary bankruptcy, and on May 11, 1899, was regularly adjudged a bankrupt.

8. That in the petition in voluntary bankruptcy, the names of all creditors, including said judgment creditors, were regularly given, with their places of residence, and the amounts of their claims, and all of the property of said bankrupt, including said real estate, was scheduled, and said real estate was claimed to be exempt, under the laws of the State of Washington, and the bankruptcy act.

9. That after said adjudication of bankruptcy, the referee notified all creditors, and especially the plaintiffs, to present their

claims against said bankrupt, and advised them of the time of the first meeting of the creditors. That at said first meeting no creditors appeared, and the schedule showing no property applicable to the payment of debts, it was found by the referee that no necessity existed for the appointment of a trustee in bankruptcy.

10. That thereafter, on August 9, 1899, an order was regularly made, by the Honorable C. H. Hanford, Judge of the United States District Court, discharging said bankrupt from all debts and claims made proveable by the act of Congress relating to bankruptcy, against said estate which existed on May 10, 1899, except such debts as were by law especially exempted from the operation of the discharge in bankruptcy.

11. That on the 12th day of August, 1899, said C. H. Hanford, Judge of said Court, made an order in said bankruptcy proceedings setting aside to said bankrupt as exempt the real estate above described, and awarded said real estate to said bankrupt.

Upon the foregoing findings of fact, the Superior Court of Lincoln county, Washington, made its conclusions of law, and entered judgment in favor of the plaintiffs, decreeing that they were entitled to the immediate possession of said real estate. From this judgment the defendants appealed to the Supreme Court of Washington. No statement of facts was prepared, but the appeal was heard on the findings of fact made by the trial court. On such appeal the judgment of the Superior Court of Lincoln county, Washington, was reversed, and the cause was remanded, with instructions to enter judgment for the defendants, Laugenour and wife, in accordance with the prayer of their answer, dismissing the action, quieting their title, and for costs.

From this final judgment of the Supreme Court of the State of Washington, the writ of error herein has been allowed by the Chief Justice of that Court.

ASSIGNMENTS OF ERROR.

The following assignments of error have been made by the plaintiffs in error (Transcript of Record, pp. 37-38):

1. "The Court erred in holding that under the provisions of the Act of Congress entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved

July 1, 1898, (30 U. S. Stats. at Large, p. 544) it was not necessary for the trustee to 'set apart the bankrupt's exemptions' as a pre-requisite to the making of a valid order by the bankruptcy court, determining the claims of the bankrupt to his exemptions under said Act of Congress."

2. "The Court erred in holding that the court of bankruptcy, under said Act of Congress, had power to make a valid order setting apart as exempt certain of the bankrupt's property without the pre-requisite of the appointment of the trustee under said act."

3. "The Court erred in holding that the court of bankruptcy had jurisdiction under the said Act of Congress to adjudicate in a summary manner as to the validity or existence of a lien claimed to have accrued upon the real property of the bankrupt more than four months prior to the filing of the petition in bankruptcy under the said Act of Congress."

4. "The Court erred in holding that after the process of the State court had attached to the real property of the bankrupt, and it was in course of being sold under such process, the order of the bankruptcy court under said Act of Congress, setting aside such property as exempt, operated, without any stay or injunction being imposed upon the action of the State court or its process or the sale in progress, to interfere with the action of the State court or its process in that regard, and invalidated the sale of said property had under such process of the State court."

5. "The Court erred in holding that the order of the bankruptcy court under the said Act of Congress setting apart as exempt the said real property to the bankrupt, made subsequent to the sale under the process of the State court of the said property, so subsequently set apart, related back to the date of the filing of the petition in bankruptcy so as to take effect prior to said sale and invalidate the same."

6. "The Court erred in holding that the said order by the bankruptcy court under the said Act of Congress setting aside as exempt the said real property to the bankrupt, adjudicated, as between the bankrupt and the said A. L. Smalley and F. McClellan, the fact of the exempt character of the said property so as to make the sale under the process of the State Court of said property upon a lien of a judgment thereon, said sale occurring prior to said order by the bankruptcy court, invalid and void."

7. "The Court erred in holding that the said order of the bankruptcy court under the said Act of Congress setting apart as exempt the said real property to the bankrupt was *res adjudicata* as between the said bankrupt and the said A. L. Smalley and F. McClellan as to the exempt character of the said real property, with regard to the lien of the judgment had thereon by the said A. L. Smalley and the said F. McClellan."

8. "The Court erred in holding that at the time of the making of the said order by the bankruptcy court setting aside the said real property as exempt the said real property was within the jurisdiction of the said bankruptcy court."

9. "The Court erred in giving judgment against the said A. L. Smalley and F. McClellan."

10. "The Court erred in holding that the said respondents, A. L. Smalley and F. McClellan, did not have the right under and by virtue of the said Act of Congress, to-wit: 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, (30 U. S. Stats. at Large, p. 544) to have the validity or invalidity of the sale of the bankrupt's real property under the process of the State court, adjudicated in the State court uninfluenced by the order of the bankruptcy court setting said property aside as exempt."

11. "The Court erred in holding that the said respondents, A. L. Smalley and F. McClellan, did not have the right under and by virtue of the said Act of Congress known as the bankruptcy act, to-wit: the act entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' approved July 1, 1898, (30 U. S. Stats. at Large, p. 544) to have the lien claimed and had by them upon the bankrupt's real property before four months prior to the filing of the petition in bankruptcy, adjudicated by the State court, together with every fact tending to establish the validity or invalidity of said lien."

ARGUMENT.

The decision of the Supreme Court of the State of Washington is reported in the 30th Washington, at page 307.

Plaintiffs in error assume this Court has jurisdiction because

an authority exercised under the United States has been drawn in question. It is apparent the main contention of appellants in error is, that the United States District Court for the Eastern District of Washington, did not have jurisdiction to declare the real estate in controversy to be exempt, or to award the same to George F. Laugenour, in the absence of an appointment of a trustee in bankruptcy.

It will be noticed that the only Federal authority involved in this action was the adjudication in bankruptcy in favor of Laugenour, and the order awarding him the land as exempt. This order was pleaded by Laugenour and wife, as an affirmative defense. Upon this order rested certain rights, privileges and immunities claimed by them. The decision of the State court recognized the validity of the order, was in their favor, *and not against* them.

The only jurisdiction of this Court to review a final judgment of the Supreme Court of a State, in a case of this character, arises under Section 709 of the United States Revised Statutes. It has been held by this Court that it has no jurisdiction over the final judgment of a State court, upon a writ of error, except in the cases specified in said Section 709, and that the jurisdiction of this Court is limited by said section with great care and in plain terms. It gives a writ of error to this Court, where a party claims a title, right, privilege or immunity under a law of Congress, or authority exercised under the United States, and the decision is *against* the right claimed. The Defendants Laugenour pleaded the discharge in bankruptcy, and the adjudication declaring said real estate to be exempt. The decision on said plea was *in favor* of Laugenour and wife, thus granting the title, right, privilege or immunity claimed under the judgment. This being the case, appellants in error are not entitled to a writ of error. Had the Court *denied* the title, right, privilege or immunity claimed by Laugenour and wife, then, by reason of such denial, they would have been entitled to a writ of error.

The policy of Congress in giving jurisdiction to the Supreme Court of the United States, to review the decision of the Supreme Court of a State, has been to so restrict such jurisdiction as simply to enable the Federal court to protect the general government from any invasion of its powers by a State government. In other words, where a Federal court has by adjudication awarded

any right or relief to a party, and a State court by its judgment enforces, recognizes or follows such adjudication of the Federal court, then the Supreme Court of the United States has no jurisdiction to review such action of the State court, even though the previous action of the Federal court, so recognized and enforced by the State court, had been erroneous or without jurisdiction.

Abbott vs. National Bank of Commerce, 175 U. S., 409.

In the case at bar, Laugenour pleaded his discharge as a bankrupt, his exemption under the order of the District Court of the United States, and claimed that these orders related back to the 10th day of May, 1899, the date on which his petition was filed. As the execution sale did not take place until May 13, 1899, his allowance of exemption took effect prior thereto. The Supreme Court of Washington has simply decided that the allowance of exemption was *res adjudicata*, that it was properly claimed in the Federal court, and that as the real estate was adjudged to be exempt, no lien under the judgment of plaintiffs could have attached to it, at any time, under the laws of the State of Washington.

The Supreme Court of Washington has made two holdings only, which are decisive of this case, without regard to any other question that may have been involved:

1. That the adjudication of exemption made by the Federal court was made with jurisdiction, and was *res adjudicata*. This was a decision *in favor of* Laugenour, granting a claim made by him to a title, right, privilege or immunity under a previous adjudication of a Federal court, and cannot now be reviewed by this Court.

2. That the real estate being exempt, an execution sale thereof was ineffectual to pass title to the purchaser. This question was decided solely under the laws of the State of Washington, and in no way involved a Federal statute, the jurisdiction of the Federal court, or a Federal question, and cannot be reviewed by this Court.

These two points are absolutely decisive of this case and are sufficient in themselves to sustain the judgment of the Supreme Court of the State of Washington without regard to any other question involved, and neither of them can be reviewed by this Court.

On the proposition that no Federal question is involved herein we cite the following authorities:

Fulton vs. McAffee, 16 Pet., 149.
Linton vs. Stanton, 12 How., 423.
Calcote vs. Stanton, 18 How., 243.
Ryan vs. Thomas, 4 Wall., 603.
Roosevelt vs. Meyer, 1 Wall., 512.
State of Missouri vs. Andriano, 138 U. S., 597.
De Lamars Nevada Gold Mining Co. vs. Nesbitt, 177 U. S., 523.

That above authorities, and many others to which they refer, clearly show this court to be without jurisdiction of this case. In Linton vs. Stanton, *supra*, this Court says: "The defendant pleaded his discharge under the bankrupt law of the United States, and at the trial offered in evidence the record of the proceeding in bankruptcy in the District Court in which he had obtained his certificate. Objections were taken to the regularity and validity of this discharge, but they were overruled by the court, and judgment rendered for the defendant. The plaintiff appealed to the Supreme Court of the State, where the judgment of the court below was affirmed, and this writ of error is brought to reverse that judgment."

"The writ must, we presume, have been prosecuted under a misconstruction of the 25th section of the Act of 1789, Ch. 20."

"We have no jurisdiction over the judgment of a state court upon a writ of error, except in cases specified in that section. And the jurisdiction of this Court is there limited with great care and in plain terms. It gives a writ of error to this Court where a party claims a right or exemption under a law of Congress, and the decision is *against* the right claimed. Undoubtedly the defendant, in pleading his discharge under the Bankrupt Law, claimed a right or exemption under a law of Congress. But in order to give jurisdiction, something more is necessary; the judgment of the state court *must be against the right claimed.* In the case before us the decision was *in favor of it*, and consequently no writ of error will lie to this Court under the provisions of the Act of 1789."

The above language could not be more applicable, if it had been written in this case.

In Missouri vs. Andriano, 138 U. S., *supra*, this court says:

"The object of the present Judiciary Act was not to give a right of review wherever the validity of an Act of Congress was

drawn in question, but to prevent the courts of the several states from impairing or frittering away the authority of the Federal Government, by giving a construction to its statutes adverse to such authority. Of course, if the construction given by the state court to the Act in which the right is claimed, *be favorable to such right*, no such reason exists for a review by this court."

Appellants in error utterly fail to make any allegation in their pleadings raising a Federal question, or sufficient to show that they claim any right, title, privilege or immunity under any statute or authority of the United States, which right, title, privilege or immunity so pleaded and claimed was denied them by the state court. The section of any statute of the United States upon which appellants rely must have been specially set up and brought to the notice of the state court. The record in this case fails to show this to have been done by appellants in error.

Hoyt vs. Thompson, 66 U. S., 518.

The Steamboat Victory, 73 U. S., 382.

Home for Incurables vs. New York, 187 U. S., 155.

Assuming for the sake of argument, that an attempt was made by appellants in error to raise a Federal question, and that under the affirmative allegations of their reply they claimed some right, title, privilege or immunity under a statute or authority of the United States; yet the Transcript of Record utterly fails to show that any such Federal question was decided against them by the state court, or was decided at all.

In Chouteau vs. Gibson, 111 U. S., 200, Chief Justice Waite says: "From the beginning it has been held that, to give us jurisdiction in this class of cases, it must appear affirmatively on the face of the record, not only that a Federal question was raised and presented to the highest court of the state for decision, *but that it was decided, or that its decision was necessary to the judgment or decree rendered in the case.*"

Murdock vs. Memphis, 20 Wall., 636.

Detroit City Railroad vs. Guthard, 114 U. S., 133.

Bridge Proprietors vs. Hoboken L. & I. Co., 68 U. S., 143.

Johnson vs. Risk, 137 U. S., 300.

County of Cook vs. Calumet & Chicago Canal Co, 138 U. S., 635.

In the third paragraph of plaintiff's reply, it is alleged, that their pretended lien was obtained more than four months prior to

the filing of the petition in bankruptcy. If appellants in error assume that by this portion of the reply any Federal question was raised which can be reviewed by this Court, we suggest the entire record utterly fails to show, that such question was ever presented to, or even decided by, the state court. Assuming that by this allegation of the reply, appellants claimed some right, title, privilege or immunity under a statute or authority of the United States, still the record utterly fails to show that such right, title, privilege or immunity was denied by the court; in fact, there is an utter absence of any showing that it was ever passed upon, or even considered by the state court. In fact, it was not considered. To give this Court jurisdiction it must appear affirmatively that the right, title, privilege or immunity claimed by appellants was positively denied by the state court.

"In order to give this Court jurisdiction under the judiciary act, it must appear from the record of the case, either by express terms or by clear or necessary intendment, that one of the questions which this Court has jurisdiction to re-examine and decide, *was actually decided* by the state court."

"This may be ascertained either from the pleadings, or by bill of exceptions, or by a certificate of the court. But the assignment of errors, or the published opinion of the court, cannot be reviewed for that purpose."

Medberry vs. Ohio, 24 How., 413.
Hamilton Mfg. Co. vs. Massachusetts, 73 U. S., 632.
Rector vs. Ashley, 73 U. S., 142.
Williams vs. Norris, 12 Wheat., 117.
England vs. Gebhardt, 112 U. S., 502.

It does not appear from the pleadings, from any bill of exceptions, or by any certificate of the court, that a Federal question was actually decided by the state court. There is an attempt, however, upon the part of the appellants in error, to inject a Federal question on their behalf into the record, by assignments of error Nos. 10 and 11, but such assignments cannot be considered for any such purpose. We contend no Federal question is involved herein giving this Court jurisdiction.

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